THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.12109 of 2007

Date: 24th September, 2007

Between :-

Tamalampudi Surreddy and another .. Petitioners

And

Assistant Engineer,
Irrigation & CAD Department,
Biccavolu, East Godavari District
And another .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.12109 of 2007

ORDER:-

This Court ordered *notice before admission* on 12-6-2007 and further granted status quo obtaining as on the said day to be maintained until further orders.

2. W.V.M.P.No.2100/2007 is filed by respondent No.2 to vacate the interim order aforesaid. Counter affidavit is filed by the 1st respondent as well.

3. At the request of the Counsel on record, the Writ Petition itself is taken up for final disposal.

4. The writ petitioners filed the present Writ Petition praying for the issuance of a Writ of Mandamus declaring the action of the respondents in taking steps to

dispossess the petitioners from their use and enjoyment of the land in S.No.209/3 of Konkuduru village, Biccavolu Mandal, East Godavari District including the coconut trees by closing or altering the existing irrigation bodi as illegal, arbitrary and violative of principles of natural justice consequently directing the respondents not to change the alignment of said bodi in existence or close the same and not to cut the coconut trees existing side of the bodi and pass such other suitable orders.

5. It is stated by the petitioners that the petitioners and their another brother are the owners and possessors of the property of 0.29 cents in S.No.209/3 of Konkuduru village of Biccavolu mandal, East Godavari District which had been partitioned by them after demise of their mother, who purchased the same by way of registered document dt.15-2-1947 and ever since they have been in continuous possession of the same without any interruption and also there is no dispute with regard to their title of the property and the revenue Department after its verification had granted pattedar pass book also to the property. It is also stated that on the northern side of the petitioners' property, there is an irrigation canal passing abutting the petitioners' property and connecting to the other water tank and the existence of the said canal is from the times immemorial and it is being used for agricultural purpose. It is further stated by the petitioners that the canal Bodi is immediately after their end point and as a boundary, they had planted 18 coconut trees and other plants and the age of the trees is also more than 30

years. It is also further stated that while so, the 1st respondent and staff visited the spot and made a marking beyond the coconut trees by saying that the irrigation canal alignment is planning to be change. It is further stated that the petitioners resisted the action of the respondent and informed that the existence of canal Bodi is known to every one and it is in use for all agricultural and drainage purposes and if it is changed or closed, it will badly affect their rights and further informed that for the said purpose, the authority cannot interfere with the petitioners' possession of the property without any notice or enquiry under the enabling statutes. It is also stated by the petitioners that they were informed that it is necessary to close or change the canal Bodi to distribute house sites in the adjoining poramboke. It is also stated that the 1st respondent to satisfy the demand of the 2nd respondent making all these attempts and the facts are brought to the notice of the higher officers by meeting personally on the same day, but the petitioners could not get any positive response. It is further stated that though this Hon'ble Court and the Apex Court on many occasions held that the authority ought to have followed the process of law and give opportunity to the parties affected with the action proposed, the respondents are ignoring the same proceeding further. It is further stated that at any movement, they may cut the trees and the 2nd respondent has nothing to do with the issue, but pressuring the other officials to proceed with further on local political issues for

which the petitioners will be the affected parties. It is also further stated that the action of the respondent is nothing but ignoring the fundamental right of the citizen and also contrary to the Board standing orders that the tanks, canal beds and other lands in use of public purpose cannot be disturbed for house sites and unless and until the survey is conducted or without acquiring the lands of the petitioner and paying compensation to the trees, the authority cannot meddle with the property of the petitioners. It is also stated that as the respondents without any authority are proceeding with the proposed action inspite of the issue having been brought to the notice of the higher authority, the petitioners have no other option except to file the present Writ Petition by invoking Article 226 of the Constitution of India.

6. In the counter affidavit filed by the 1st respondent, sworn to by the Assistant Engineer, Irrigation Circle, Tossipudi of Biccavolu Mandal, it is stated that to the northern side of field 209/3 a revenue Bodhi is passing through survey No.209/2 to feed lower down tank and hence, the entire S.No.209/2 is revenue poramboke which is under the control of Revenue Department. It is also stated that there is no proposal of changing the alignment of Bodhi by Irrigation Department as it comes under the purview of Revenue Department. It is also further stated that the existing Bodhi comes under the purview of Revenue Department and it was maintained by ayacutdars only and there is no proposal of changing the alignment of Bodhi by Irrigation Department and hence,

the Irrigation Department is no way concerned with this case. It is also stated that this matter is to be dealt with the Revenue Department and Irrigation Department is no way concerned to deal this issue except providing water to the ayacut.

7. In the Vacate Application filed by the 2nd respondent, in the affidavit filed in support thereto, it was stated that in the Gram Sabha held on 14-4-2007 the applications of houseless poor of the village for providing house sites in the Government poromboke land situated at S.Nos.209/2, 209/1, 208/1 of Veerabandham Puntha Area had been considered and accordingly the Gram Sabha resolved to request the Tahasildar, Bokkavolu Mandal to got survey the poromboke land and demarcate the same for providing house sites to the weaker section by the competent authority and accordingly, the Mandal Surveyor got surveyed the land and demarcated the extent of poromboke land and field map was prepared and boundaries were fixed. It is also stated that as per the survey and the field map, the Government land exists up to the bund of Bode. It is further stated that after the said survey, the petitioners have filed the present Writ Petition with false and untenable grounds stating that the coconut trees existing on the bund of the Bode belongs to them and the Gram Panchayat is trying to interfere with the peaceful possession of their patta land. It is also stated that absolutely Gram Panchayat has nothing to do with the alleged property of the petitioners in S.No.209. It is also stated that as per the survey report and the

boundaries that were fixed by the Mandal Surveyor, the land in S.No.209 is separate land and nobody is interfering with the possession and enjoyment of the petitioners. It is further stated that it is a fact that the canal and the Bodi is existing from the times immemorial and it is totally false to say that the end point of the petitioners' land is upto the Bodi and in between the lands belonging to the petitioners and the Bodi, there is a Government land and on the bund/bodi, coconut trees are existing. It is also stated that as per the provisions of the P.R.Act, all trees existing over the tank beds, canal bunds vests with the Gram Panchayat and the petitioners cannot claim any right over the existing trees over the bund/bodies and it is absolutely incorrect to say that the petitioners have planted the trees as a boundary to their lands. It is further stated that in between the lands of the petitioners and the Bodi, Government land is existing and the petitioners cannot claim rights over the trees which are existing on the bodi and far away from their patta land. Further it is stated that it is absolutely incorrect to say that the respondents are trying to close the canal and alter the Bodi by changing the alignment and that there is no such proposal either to alter the alignment of the canal or to close the canal. It is also stated that the existing Government poromboke got surveyed and boundaries were fixed for providing house sites for the houseless poor of the village. It is further stated that absolutely there is no influence on the 2nd respondent from any quarter as alleged and the whole allegations are invented for the

purpose of filing the present Writ Petition. It is also stated that the Gram Panchayat is not going to cut down the trees existing on the canal bund as alleged. It is also stated that survey was conducted by demarcating the Government poromboke land fixing the boundaries and other than that nothing was done insofar as the property of the petitioners are concerned.

8. In the light of the respective stands taken by the parties, inasmuch as, the parties are not claiming interest in the subject matter and also in the light of the specific stand taken that there is no proposal of changing the alignment of Bodi by Irrigation Department and the Irrigation Department is in no way concerned with the case except providing water to the ayakut and the matter to be dealt with by the Revenue Department and not by the Irrigation Department, the same is hereby recorded and the Writ Petition is disposed of accordingly. No order as to costs.

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Justice P.S.Narayana

24th September, 2007

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